

## **REMARKS**

Claims 1, 3-21 and 23-40 are in the application. Claims 41-47 have been canceled as directed to non-elected subject matter. Claims 2 and 22 have been cancelled without prejudice to expedite prosecution. No claim is allowed.

Claims 1, 3, 4, 8, 10, 14, 18, 21, 23-28, 30, 34 and 38 have been amended to clarify the features of the invention. No new matter is added.

Claims 1-7, 14,15, 18-27, 34,35 and 38-40 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Franklin et al. ('352) in view of Webber (WO98/34167). This rejection is respectfully traversed.

### **Claims 1-4 and 21-23**

Franklin is directed to a system and method for solving the problem of the consumer's inability to create one electronic shopping basket for items from many websites of many e-tailer suppliers (merchants who sell over the Internet). In absence of Franklin's invention, the electronic shopper can store shopping basket product information only on the server side, that is, only on the particular e-tailer's website. If the consumer wants to create a shopping basket for another e-tailer's website he/she must enter that website and create a second shopping basket. Franklin allows the creation of one computer-based shopping system usable on a personal computer to serve as a shopping basket for products from many websites. The present claim performs its functions so that consumers, all consumers, may order from a single, common website. The merchant (e-retailer) from each website does not appear to have the ability under Franklin's system to selectively route any of the orders to another retailer for fulfillment of the customer's order. The transaction is between the customer who created the shopping basket and the e-tailer on the website selected by the customer. The point of sale to the consumer is with the e-tailer. Franklin thus discloses a system for an e-tailer consumer to selectively gather and store information from an existing merchant and from many websites in a network environment, comprising a shopping basket to gather and store product information, a wallet in which sources of payment can be stored, and an address book in which shipping addresses can be stored, all on the existing consumer's computer. But there is no order flow controller. The e-tailer is unable to receive orders from multiple consumers on the internet using the shopping basket set up on a single website. Each

consumer will set up his/her shopping basket differently and each has interest in different products and e-tailers.

However, by “supplier”, applicants intend the common meaning of supplier or manufacturer, i.e., the top of the chain of commerce. Applicants do not intend the supplier to encompass an e-tailer type of retailer or distributor. The retailers who participate with the supplier/manufacturer according to applicant’s system are traditional brick-and-mortar retailers, not e-tailers. See the specification, page 4, lines 27-29.

The examiner relies upon Webber as showing a system for automating transactions of buying and distributing products in accordance with the specified policies of the supplier.

Applicants respectfully disagree with this characterization of Webber. Webber’s system is a way of avoiding written record keeping of sales and fulfillment of those sales by the seller. Referring to Webber’s FIG. 2, the point of sale is still between the customer 251 and the specific merchant 241, A-G. The fulfillment of the order is determined by the respective Internet merchants 241, A-G. While there are supply chain enterprises 277 downstream, the suppliers are merely fulfillment entities and do not directly participate on the Internet for the customer’s business. To put it in a simplified way, in Webber’s FIG. 2 the supply chain enterprises 277 cannot directly deal with the customer 251. In the present claims, the supplier not only participates, but it controls who fulfills the consumer’s order. In Webber, the supply chain enterprises 277 have no say as to which e-retailer fulfills the order. The examiner states that Webber shows operational instructions, terms and conditions including fulfillment policies of the supplier that are negotiated. These are said to form a contract containing fulfillment policies of the “seller.” But the seller in Webber is the e-retailer, not the supplier/manufacturer. Nowhere does Webber explain that the operational instructions explicitly include control of the fulfillment terms by the supplier, as opposed to the e-tailer merchant with whom the customer is directly dealing, or by the customer.

Webber's system for distributing products is in essence; 1) a reverse auction where the buyer submits an offer to purchase an item - the offer includes terms, conditions and fulfillment *as specified by the buyer* – the middleman submits the offer to a pool of e-tailers – one of the e-tailers can selectively choose to accept the terms and conditions, and fulfill the order. Alternatively, Webber's system serves as 2) an

electronic ordering system for just-in-time fulfillment for an e-tailer merchant and in that case the merchant is the buyer without a consumer (a business-to-business) or; 3) a ratified contract at the POS (point of sale) between two or more parties.

Accordingly, neither Franklin nor Webber discloses a system which functions as the presently claimed invention. Neither Franklin nor Webber solves the problem of channel conflict, that is, the problem of avoiding online competition of the supplier/manufacturer with its brick-and-mortar retailers for the same products. In many instances, the contractual arrangement between a supplier prohibits the supplier from directly competing with its brick-and-mortar retailers in the same geographical market. Since the internet is a world-wide marketplace, a supplier is similarly prohibited from selling online in competition with its retailers without some protective conditions that would not allow the supplier to cannibalize its retailers. The present invention solves that problem.

In accordance with applicants' system, the consumer sends his/her order to the supplier/manufacturer. One or more brick-and-mortar retailers may also ultimately receive the order, but that is dictated by the supplier/manufacturer in accordance with the supplier's specified fulfillment policies.

For the foregoing reasons, it is submitted that the present claims are unobvious over the combination of Franklin and Webber and withdrawal of the rejection is respectfully requested.

#### Claim 3

In either Franklin's or Webber's system, the consumer is dealing directly with a merchant-retailer. Why would the merchant set up his system not to fulfill a consumer's order? In applicants' system the supplier is in control of fulfillment. The supplier, for example, may not want to fulfill any orders, but rather funnel the orders to its retailers. That is not an option for the supplier in Franklin's or Webber's system. Accordingly, it is submitted that the subject matter of claim 3 is unobvious.

#### Claim 4

In Franklin there is no order flow controller. It is only a consumer's personal shopping cart. In Webber, the supplier does not identify retailers to fulfill orders. The merchant-retailer designates the suppliers to fulfill the orders. See Webber, Fig. 2. Customers send orders to retailers 241. The supply chain enterprises 277 fulfill the orders. The control of the fulfillment policy by the supplier is now clearly recited in the claims. The subject matter of claim 4 is thus unobvious for the reasons given

above.

Claims 5-7

In view of the distinctions discussed above in connection with Franklin and Webber, the back room manager of Franklin does not remedy the deficiencies of the primary references. Accordingly these claims are unobvious over the cited references.

Claims 14-15

In view of the distinctions discussed above in connection with Franklin and Webber, the price filter of Webber does not remedy the deficiencies of the primary references. Accordingly these claims are unobvious over the cited references.

Claims 18-20

In view of the distinctions discussed above in connection with Franklin and Webber, the escrow account manager of Webber does not remedy the deficiencies of the primary references. Accordingly these claims are unobvious over the cited references.

Claims 24-27

In view of the distinctions discussed above in connection with Franklin and Webber, the order list of Webber does not remedy the deficiencies of the primary references. Accordingly these claims are unobvious over the cited references.

Claims 34, 35 and 38-40

In view of the distinctions discussed above in connection with Franklin and Webber, these claims are unobvious over the cited references.

Claims 8, 9, 28 and 29 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Franklin in view of Webber and further in view of Johnson et al. ('516).

The Examiner relies on Johnson to disclose an electronic sourcing system maintaining a catalog of product information. The system allegedly checks for availability of selected items, generates purchase orders and includes a consumer interface configured to display price and availability of products by each supplier by product category. The system is thus configured to enable a consumer to search through products of a given category by supplier. Applicants respectfully traverse this rejection.

Johnson's system has little relevance to the presently claimed system. The present system is not concerned with informing the consumer of the availability of the

product. The consumer places an order and the supplier, according to the invention, determines who fulfills it: either the supplier itself or one of its retailers. Johnson has nothing to do with these claimed features.

Claims 8, 9, 28, 29

Johnson does not remedy the deficiencies previously discussed above with respect to Webber and Franklin as applied to claims 1, 2, 21 and 22. It appears that Johnson is directed to a search engine for selecting items from a catalog that generates a purchase order for the desired item from inventory locations. The supplier does not determine who fulfills the order (that is, whether it be the supplier itself, or a retailer selected by the supplier). The point of sale is at the catalogue item on the database, selected by the retailer, not by the supplier. Therefore, it is submitted that the claims are unobvious over the combination of Webber, Franklin and Johnson and withdrawal of the rejection is respectfully requested.

Claims 10-13 and 30-33 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Franklin in view of Webber, further in view of Knowlton ('057). This rejection is respectfully traversed.

Claims 10-13 and 30-33

Knowlton is relied upon to show an apparatus and method for creating and distributing graphical user interfaces configured to enable a consumer to display selected product representation in a scratch pad window. However, Knowlton does not remedy the deficiencies of Webber as discussed above as applied to claims 1,2, 21 and 22. Accordingly, it is submitted that claims 10-13 and 30-33 are unobvious over the cited combination of references and withdrawal of the rejection is respectfully requested.

Claims 16, 17, 36 and 37 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Franklin in view of Webber, further in view of Allsop ('472). This rejection is respectfully traversed.

The deficiencies of Franklin and Webber as applied to claims 1, 2, 21 and 22, from which these rejected claims ultimately depend, have been discussed above and are incorporated herein.

Allsop is relied upon by the examiner to disclose a system whereby electronic commerce is performed with links from manufacturers to authorized dealers with custom order interfaces, including a price filter. Suppliers (manufacturers) can transmit retail information, including payment information from authorized dealers.

Transmission of retail information about payment is not relevant to determining who has the opportunity to fulfill a particular order. It is not seen how Allsop therefore remedies or is even relevant to the combination of Franklin and Webber as applied by the examiner. Accordingly, reconsideration and withdrawal of the rejection is respectfully requested.

Accordingly, it is submitted that upon entry of this amendment the application is in condition for allowance.

If prosecution of this application can be assisted by telephone, the Examiner is requested to call Applicants' undersigned attorney at (510) 663-1100.

Please apply any other charges or credits to deposit account number 504480 (Order No. BDGOP001X1).

Respectfully submitted,

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